## REMARKS/ARGUMENTS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Claims 1-17 are now pending.

Claim 1 has been amended to incorporate the limitations of dependent claim 5 and claims 5 and 6 have been canceled. Claim 10 has been amended to incorporate the limitations of dependent claim 13 and claims 13 and 14 have been canceled. Further, claim 17 has been presented in independent form.

Claim 1-4, 6-12, 14 and 17 were rejected under 35 USC 102(e) as being anticipated by McDermott. This rejection has been mooted with respect to claims 1 and 10 in view of the amendment presented above. Applicant respectfully traverses this rejection with respect to claim 17 which has now been presented in independent form.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

Claim 17 is directed to a method of repairing an aneurysmic region of a blood vessel comprising delivering an outer and an inner wall structure to the site of an aneurysmic region, filling a space between the inner and outer wall structures and wherein the "step of filling expands said outer wall structure to generally conform to an interior shape of the aneurysmic region of the blood vessel" (emphasis added).

It is respectfully submitted that McDermott does not anticipate claim 17 nor would the recited method be obvious from McDermott. The Examiner has asserted that the McDermott endovascular device is expandable "to conform to an interior shape [sic] the vessel in which it is deployed". It is respectfully submitted that the Examiner' statement is not entirely accurate. PTFE is the only material McDermott discloses with specificity. This material is not very expandable. Moreover, the McDermott endovascular device is pre-formed to assume a generally straight tubular shape on inflation. As such, McDermott does not disclose an endovascular device when the outer wall structure would expand to conform to an interior shape of the aneurysmic region of the blood vessel. Indeed, as McDermott discloses, near its proximal and distal ends the device will be in contact with the healthy vessel walls (column 5, lines 9-11) but in the central portion between the proximal and distal ends, which corresponds to the aneurysmic region of the blood vessel, the McDermott device is spaced from the aneurysm walls and it is for that reason that McDermott mentions that thrombus will exist between the aneurysm walls and the device (column 5, lines 11-15). Therefore, McDermott expressly teaches that the outer wall of his device does not conform to the interior shape of the aneurysm region and, furthermore, the skilled artisan would recognize e.g., from the seamed assembly, that such a distension of the outer wall relative to the inner wall would not be possible in McDermott. Thus, McDermott neither anticipates claim 17 nor motivates the skilled artisan to provide the same. The remaining art of record does not overcome McDermott's deficiencies in this regard and it is therefore respectfully requested that the Examiner's rejection of claim 17 be reconsidered and withdrawn.

Previously presented claims 5, 8, 13, 15 and 16 were rejected under 35 USC 103(a) as being unpatentable over Chobotov in view of Yannas. Applicant respectfully traverses this rejection.

Contrary to the Examiner's characterization of Chobotov, Chobotov does not disclose an endovascular graft and method of delivering the graft as claimed. Indeed, as acknowledged by the Examiner, Chobotov does not disclose that his graft is permeable to blood and moreover, Chobotov does not disclose that the graft is delivered as a multi-layer graft. In fact, Chobotov specifically teaches against delivery of a multi-layer graft structure.

The Chobotov patent discloses a layered endovascular graft that is created from two separate thin wall graft members. According to the Chobotov disclosure, the advantage of the multi-walled structure is that each individual thin walled graft member can be constructed with less bulk and less material mass than would be required for a single component graft of similar strength. However, each layer of the multi-layered graft is formed from the same material, there being no apparent difference in proposed structure or composition between the inner and outer grafts. Also, Chibotov discloses that suitable materials for the thin walled graft are those that impede the flow of blood or other bodily fluids.

Thus, Chibotov does not teach providing different materials for the inner and outer graft portions, and Chibotov does not teach or suggest the flow of (whole) blood through the wall of the inner graft, or otherwise into the area between the graft layers, nor the expansion of the outer graft material.

Claim 1 specifies that the endovascular device includes means for a solidifiable fluid to flow to an area between the outer graft wall and inner graft wall. As noted above, not only does Chibotov lack any teaching or suggestion that means should be provided for fluid to flow to an area between the inner and outer graft walls, but Chibotov specifically teaches against the claimed structure because Chibotov discloses that materials for the thin walled graft should be those that impede the flow of blood or other bodily fluids. Thus, Chibotov does not teach or suggest means as required by claim 1 and certainly does not provide any disclosure of the recited method step of "filling the space between the inner and outer wall structures". As is apparent from the Chibotov disclosure, the motivation for Chibotov's two layer assembly is to facilitate installation and not to provide a fillable space between stent structures much less fill such space as specifically required by applicant's claims.

It is noted that in the first Official Action, the Examiner suggested polymer adhesives somehow meet applicant's claim limitations. The Examiner's statement in this regard is not well taken because even if an adhesive is provided to secure ends of the Chibotov layers this would not anticipate the claimed limitation of filling a space between the inner and outer wall structures. Indeed, applying an adhesive to secure ends does not teach filling a space between the layers as claimed. Moreover, the Examiner's suggestion that in Chibotov flowing blood would permeate through the implanted graft is not well taken as Chibotov specifically teaches against the flow of blood through his graft. Providing a similar material does not *ipso facto* mean that blood is capable of or intended to permeate through it. Moreover, as noted above, Chibotov does not teach or in anyway suggest that the layers of his structures should be formed from different materials so that flow into the space between layers results in expansion of the outer layer relative to the inner layer. Under the circumstances described above, it is respectfully submitted that the invention claimed is not anticipated by Chibotov.

The Examiner's further reliance on Yannas does not overcome the deficiencies of Chobotov with respect to the invention claimed. It is further respectfully submitted that it would be unobvious without the benefit of applicant's disclosure to modify Chobotov in the manner the Examiner suggests. As noted above, the reason Chobotov teaches providing multiple layers is to enable delivery through a smaller, more flexible delivery system. The simultaneous delivery of a multi-layered stent would be completely contrary to Chobotov and would defeat the purposes Chobotov discloses for his disclosed and claimed configuration. It is not proper under 35 USC 103 to modify a prior art patent in a manner which would destroy that on which the invention of the prior art patent was based. Ex parte Hartman, 186 USPQ 366,67 (PTO Bd. App. 1974).

Furthermore, Yannas discloses a bio-replaceable blood vessel prosthesis. Yannas no where teaches or suggests that his bio-replaceable blood vessel prosthesis would be suitable for bridging an aneurysmic portion of a blood vessel, as disclosed in Chobotov. It is further respectfully submitted that the Examiner has mischaracterized the disclosure of Yannas. In this respect, although the Examiner has characterized Yannas as teaching an inner layer that is permeable to blood components, what Yannas in fact discloses, e.g., at column 6, is that the conduit should not allow leakage of whole blood and should have a low porosity to ensure bio-replacement at a rate which is not too slow nor too fast, balancing mechanical properties and bio-replacement rate.

Section 103 does not allow the Examiner to engage in picking and choosing from the prior art only to the extent that it will support a holding of obviousness, while excluding parts of the prior art essential to the full appreciation of what the prior art suggests to one of ordinary skill in the art. In re Wesslau, 147 USPQ 391 (CCPA 1975).

As is clear from the foregoing, Yannas relates to an entirely different type of graft than Chobotov and the skilled artisan would use these disclosures in the alterative and would not modify Chibotov in view of Yannas, because Chibotov neither teaches nor desires a bio-absorbable structure and teaches specifically against the simultaneous implantation of multiple layers.

As the CAFC has said, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. ACS Hospital Systems v Montefiore Hospital, 221 USPQ 929, 933 (Fed. Cir. 1984). There must be a suggestion in the art relied upon to use what one reference discloses in or in combination with the disclosure of the other reference or references relied upon by the Examiner. In re Grabiak, 226 USPQ 870, 872 (Fed. Cir. 1986).

For all the reasons advanced above, reconsideration and withdrawal of the Examiner's rejections of record is solicited.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

Respectfully submitted,

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